

SPECIAL CIVIL APPLICATION NO 4074 OF 1986

Date of decision: 13.9.1995

FOR APPROVAL AND SIGNATURE:

Hon'ble Mr. Justice

R.K.Abichandani

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter of not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. R.N.Dave, Advocate for the petitioner

Miss Harsha Devani, Assistant Government Pleader for the respondents.

Coram:R.K.Abichandani,J.

Date :13.9.1995

ORAL JUDGEMENT:

The petitioner challenges the order of the Urban Lands Tribunal passed on 30.1.1986 in Appeal No. Baroda 714/84 dismissing the appeal of the petitioner and confirming the order of the competent authority cancelling the permission which was granted under Section 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976.

The petitioner was granted permission under Section 21(1) of the said Act on 5th August, 1985. One of the

conditions incorporated in the order granting permission was that the construction should be commenced within one year from the date of the order granting permission. The competent authority finding that the construction was not commenced within one year from the date of permission, held that there was breach of condition committed by the petitioner and therefore, cancelled the permission under the provisions of Section 21(2) of the Act. The appellate Tribunal also held that there was violation of the said condition No.9 as the land holder did not start the construction of the dwelling unit within one year from the date of sanction. It was also held that the competent authority had no power to relax any term of condition.

The approach of the competent authority and the appellate Tribunal cannot be sustained in view of the decision of this Court in K.M.Sheth Vs. Competent Authority, reported in 1994 (Guj.) 130 in which it has been laid down that the conditions to be imposed while granting permission under Section 21(1) of the Act could be none other than the conditions prescribed by the Rules or in other words set out in Schedule 1 A appended thereto. The word "prescribed" is defined under Section 2(j) of the Act and it means prescribed by Rules made under the Act. Therefore, the expression "subject to such terms and conditions as may be prescribed....." in Section 21 would mean terms and conditions prescribed by the Rules. As held in K.M.Sheth's case (supra), the condition of time limit of one year within which the holder was required to commence the construction work laid down in the permission granted under Section 21(1) could not have been imposed by the competent authority because no such condition was prescribed by the Rules and the competent authority had no power to impose any such condition with respect to the time limit within which the construction work was required to be commenced by the holder. In this view of the matter the impugned orders of the competent authority and the appellate Tribunal at annexures "K" and "M" to the petition cannot be sustained and are set aside. Rule is made absolute accordingly with no order as to costs.
